APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,532	11/09/2001	Jedrick J. Weldon	09710-1111	5779

25537 7590 10/02/2003	EXAMINER	
WORLDCOM, INC.	HYUN, SOON D	
TECHNOLOGY LAW DEPARTMENT		
1133 19TH STREET NW	ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036	2663	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*07 July 2003*</u> .

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 21-25* is/are rejected.

7)☒ Claim(s) *19 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)   4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5)☐ Notice of Informal Patent Application (PTO-152)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .   6)☐ Other: .

DETAILED ACTION

A *Continued Examination Under 37 CFR 1.114*

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/07/2003 has been entered.

Claim Objections

2.   Claims 7 and 8 are objected to because of the following informalities.

Claims 7 and 8 are objected to because all instances of "configured to" in each claim should have been deleted to make the claim positive. Language such as "adapted to/for", configured to/for", or arranged to/for" (or similar phrases such as "enabled to", "capable of", etc.) Is not considered positive recitation per MPEP 2106.

In claim 8, line 3, -- indicator – should be added after "latency" to avoid lack of antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1-3, 5, 7, 9-12, 14, and 22-25 are rejected under 35 U.S.C. 102(e) as

being anticipated by Pogrebinsky (U.S. Patent No. 6,445,681).

Regarding claims 1, 9, 22, and 23, Pogrebinsky discloses a method and a

system measuring delay parameters in a packet switching network between node A and

node B, i.e., each node is a probing router, the method comprising the steps of:

forwarding a packet (a probe packet P1) to a destination node B of the packet

communication network (FIG. 6) that is reachable by any one of a plurality of

connectionless communication paths in the Internet, wherein the packet traverses a

particular communication path among the plurality of connectionless communication

paths in the Internet to the destination node; and

generating and sending a probe message over the particular connectionless

communication path traversed by the packet for determination of delay parameters

(statistics of the communication network). See col. 2, line 6-col. 4, line 51. Pogrebinsky

does not explicitly teach a structure of each node and a computer-readable medium, but

a routing engine, a probe mechanism and a computer-readable medium are inherently

required in each node to implement the steps.

Regarding claims 2, 5, and 10-12, Pogrebinsky further discloses that the probe

message is sent at time TA1 (T1) and the probe mechanism receives a reply probe

message (P2) at a second time, TA2 (T2), sent by the destination node in response to

receiving the probe message with a remote latency indicator (a slight later time than TB1, i.e., a processing time at node B, see col. 3, line 60) therein so that service level agreement characteristics may subsequently be derived by comparing T1, T2 and the remote latency indicator.

Regarding claim 3, Pogrebinsky does not explicitly teach a memory storing the delay parameters (the service level agreement characteristics) identified by the probe mechanism, but the memory is inherently required to implement the steps.

Regarding claim 7, Pogrebinsky does not explicitly teach a probe poller device that calculates the delay parameters (the service level agreement characteristics), but the device is inherently required to implement the steps.

Regarding claim 14, refer to the discussion for the claims 1 and 7. Pogrebinsky does not explicitly teach a reporting mechanism, coupled to the probe poller as recited in the claim. The report mechanism is inherently required for Pogrebinsky, because the measured parameters are used to optimize the network utilization, see col. 1, lines 16-18.

Regarding claims 24 and 25, Pogrebinsky teaches the Internet between node A and node B, i.e., the probe packet is transferred with a source IP address and a destination address via the Internet which comprises a source router and a destination router that is associated with a predetermined location.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

7.   Claims 4, 8, 13, 15, and 21 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Pogrebinsky (U.S. Patent No. 6,445,681) in view of Casey (U.S.

Patent No. 6,493,349)

Regarding claims 4, 13, and 15, refer to the discussion for the claims 1, 9 and 14.

However, Pogrebinsky does not explicitly teach that the Internet between node A and

node B comprises virtual private network architectures. Casey discloses a

communication network to offer service level agreements relating to delay, packet loss

etc. for an IP VPN, wherein tunneling (channel) is a one of various mechanism used for

the IP VPN. See col. 3, line 26-65. Those of skill in the art would have been motivated

by Casey to incorporate the IP VPN scheme into Pogrebinsky to measure delay

parameters for an IP VPN. Therefore, it would have been obvious to one having

ordinary skill in the art to incorporate a tunnel channel in a virtual private network into

Pogrebinsky to measure delay parameters for an IP VPN.

Regarding claims 8 and 21, refer to the discussion for the claim 7. However,

Pogrebinsky does not teach a packet loss rate for measuring the delay parameters.

Casey discloses a communication network to offer service level agreements relating to

delay, packet loss etc. for an IP. See col. 3, line 26-65. Those of skill in the art would

have been motivated by Casey to incorporate a packet loss rate into Pogrebinsky to

optimize network utilization.

8.   Claims 6 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Pogrebinsky (U.S. Patent No. 6,445,681).

Regarding claim 6, refer to the discussion for the claim 7. However, Pogrebinsky

does not teach that a polling interval at which the probe mechanism sends the probe

message is programmable. It would have been obvious to one having ordinary skill in

the art to make the program (a computer-readable medium) of Pogrebinsky including

the polling interval to be programmable to adjust the program according to various

occasions and to take advantage of using a software.

Regarding claim 16, Pogrebinsky does not explicitly teach that the node A is

located within a customer premise. It would have been obvious to one having ordinary

skill in the art to locate the node A within a customer premise without deviating from the

broad principal and sprit of the present invention.

Regarding claims 17 and 18, Pogrebinsky does not explicitly teach that the node

A comprises a display means as recited in the claim. It would have been obvious to one

having ordinary skill in the art to comprise the display means for an operator of the node

to check the parameters visually and print the measurements through a web interface

connected to the Internet.

Allowable Subject Matter

9.   Claims 19 and 20 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Conclusion

10.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Soon-Dong Hyun whose telephone number is (703)
305-4550. The examiner can normally be reached on Monday-Friday from 8:30 A.M. to
5:30 P.M..
         If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Chau Nguyen, can be reached on (703) 308-5340.
         Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the Group receptionist whose telephone number is

(703) 305-3900.

11.   Any response to this action should be mailed to:
         Commissioner for Patents
         P.O. Box 1450
         Alexandria, VA 22313-1450

Or faxed to: 703-872-9306 for formal communications intended for entry with a label of "OFFICIAL" and for informal or draft communications with a label of "PROPOSED" or "DRAFT" (attn: Art Unit 2663, Soon-Dong Hyun).

S. Hyun

9/22/2003

CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
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